IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

(Attorney Docket No. 06-278)

In the Application of:		)	
		)	
	John Hillel Moshal	)	**Art Unit: 3714**
		)	
Serial No.:	**10/576,743**	)	
		)	**Examiner: Lim, Seng Heng**
Filed:	**January 9, 2007**	)	
		)	
For:	**Redundant Gaming System**	)	**Confirmation No. 8207**

APPEAL BRIEF

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I. Real Party in Interest

The real party in interest is Waterleaf Limited, the assignee of record.

II. Related Appeals and Interferences

Applicant is not aware of any related appeals or interferences.

III. Status of Claims

Claims 26-40 are pending and stand rejected. Claims 1-25 have been canceled. The rejection of claim 26-40 is being appealed. A clean set of the pending claims is attached in the Claims Appendix beginning at page 13.

IV. Status of Amendments

No amendments were filed after the final rejection mailed November 24, 2008.

V. Summary of Claimed Subject Matter

Of the claims being appealed, claims 26 and 34 are independent. Claims 27-33 are dependent on claim 26. Claims 35-40 are dependent on claim 34.

Claim 26 is directed to a gaming system, comprising: (a) at least one player station for displaying to a player a simulation of a game of chance (*see* Specification, p. 2, lines 21-23; p. 6, lines 10-12; p. 6, lines 14-18; p. 6, lines 22-27; p. 7, lines 3-6; and p. 8, lines 20-24); (b) a primary gaming server located remotely from the at least one player station and communicable with the at least one player station via a communication network, wherein the primary gaming server is configured to provide outcomes for the game of chance upon request from the at least one player station (*see* Specification, p. 2, lines 24-28; p. 3, lines 19-23; p. 6, lines 10-14; p. 7, lines 1-3; p. 7, lines 16-18; and p. 8, lines 1-7); (c) a secondary gaming server located remotely from the at least one player station and communicable with the at least one player station via the communication

network, wherein the secondary gaming server is configured to provide outcomes for the game of chance upon request from the at least one player station (*see* Specification, p. 2, line 29 – p. 3, line 2; p. 3, lines 19-23; p. 6, lines 10-14; p. 7, lines 1-3; p. 7, lines 16-18; and p. 8, lines 9-16); (d) a watchdog facility configured to (i) transmit a data packet to the primary gaming server at regular intervals and (ii) whenever an expected response is not received from the primary gaming server within a predetermined time interval, to change a status of the primary gaming server from active to failed (*see* Specification, p. 3, lines 23 – p. 4, line 1; p. 4, lines 6-8; p. 7, lines 7-10; and p. 8, line 26 – p. 9, line 5); and (e) a controller in the at least one player station for routing a request to provide an outcome of a turn of the game of chance, wherein the controller routes the request to the primary gaming server when the status of the primary gaming server is active and routes the request to the secondary gaming server when the status of the primary gaming server is failed (*see* Specification, p. 7, lines 7-10; and p. 8, lines 1-16).

Claim 34 is directed to a method of operating a gaming system, the gaming system comprising a player station, a primary gaming server, and a secondary gaming server, the player station being remotely located from and communicable with the primary and secondary gaming servers via a communication network. The method comprises the steps of: (a) displaying on the player station a simulation of a game of chance (*see* Specification, p. 4, lines 16-18; p. 6, lines 14-18; p. 6, lines 22-23; and p. 7, lines 3-6); (b) a watchdog facility transmitting a data packet to the primary gaming server at regular intervals (*see* Specification, p. 5, lines 7-11; and p. 8, line 26 – p. 9, line 2); (c) the watchdog facility changing a status of the primary gaming server from active to failed whenever an expected response to the data packet is not received from the primary

gaming server within a predetermined time interval (*see* Specification, p. 5, lines 12-15; and p. 9, lines 2-5); (d) a controller in the player station routing a request to provide an outcome of a turn of the game of chance, wherein the controller routes request to the primary gaming server when the status of the primary server is active and routes the request to the secondary gaming server when the status of the primary gaming server is failed (*see* Specification, p. 7, lines 7-10; and p. 8, lines 1-16); (e) determining an outcome in response to the request (*see* Specification, p. 8, lines 1-16); and (f) the player station receiving the outcome via the communication network and displaying the outcome to a player (*see* Specification, p. 8, lines 18-24).

VI. Grounds of Rejection to be Reviewed on Appeal

Claims 26-32 and 34-39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Coile et al., U.S. Patent No. 6,108,300 ("Coile") in view of Holch et al., U.S. Patent No. 5,674,128 ("Holch"). Claims 33 and 40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Coile in view of Holch, and further in view of Duncombe et al., U.S. Pub. No. 2003/0120685 ("Duncombe").

VII. Argument

A. The Examiner Erred in Rejecting Claims 26-32 and 34-39 Under 35 U.S.C. § 103(a) as Being Unpatentable Over Coile in View of Holch

Independent claims 26 and 34 are directed, respectively, to a gaming system and a method of operating a gaming system, in which a ***watchdog facility*** determines whether the status of a primary gaming server is "active" or "failed" and a ***controller*** in a player station routes a request to provide an outcome of a turn of the game based on this status, routing the request to the primary gaming server when the status is "active" and routing the request to a secondary gaming server when the status is "failed." In this regard, claim

26 recites "a ***watchdog facility*** configured to (i) transmit a data packet to the primary gaming server at regular intervals and (ii) whenever an expected response is not received from the primary gaming server within a predetermined time interval, to change a status of the primary gaming server from active to failed" and "a ***controller*** in the at least one player station for routing a request to provide an outcome of a turn of a game of chance, wherein the controller routes the request to the primary gaming server when the status of the primary gaming server is active and routes the request to the secondary gaming server when the status of the primary gaming server is failed." Claim 34 includes similar language.

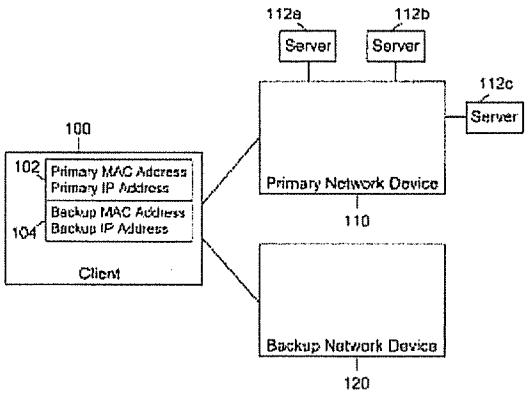
In rejecting claims 26 and 34, the Examiner argued that Coile discloses both the claimed "watchdog facility" and the claimed "controller." *See* Final Office Action, pp. 2-3. But the Examiner's rejections are fatally flawed for at least two reasons. First, the Examiner has used an improper "mix-and-match" approach by relying on some features of one system in Coile (Figure 1, including client 100) and relying on other features of a completely contrary system in Coile (Figure 2, including client 200), as if these two, contrary systems were one and the same system. Second, Coile does not disclose a watchdog facility that detects when an expected response is not received from the primary server within a predetermined time interval. These two points are discussed in detail below.

1. The Examiner has used an improper "mix-and-match" approach

In an obviousness rejection, "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988). And it is impermissible

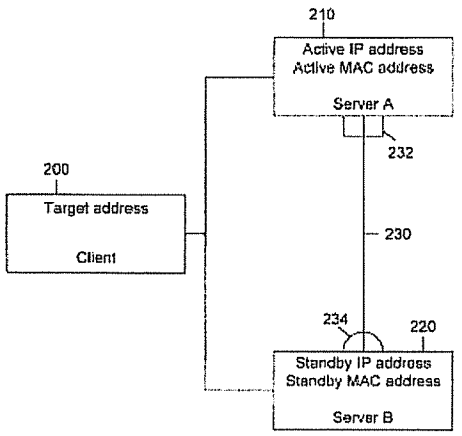
"to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." *In re Wesslau*, 353 F.2d 238, 241 (CCPA 1965). The Examiner, however, has done just that by relying on some features of one system disclosed in Coile (Figure 1, including client 100) and relying on other features of a completely contrary system disclosed in Coile (Figure 2, including client 200), as if these two, contrary systems were one and the same system.

Figure 1 is described in the "Background" section of Coile as illustrating "a typical backup system." *See* col. 2, lines 29-30. The Figure 1 system includes a client 100, a primary network device 110, and a backup network device 120. *See* col. 2, lines 30-49. The Figure 1 system requires client 100 to sense when primary network device 110 fails and requires client 100 to switch its connection to backup network device 120 when primary network device 110 fails. *See* col. 2, lines 50-52, lines 56-58, and lines 63-65. To achieve this functionality, client 100 stores the IP address and MAC address of primary network device 110 in register 102 and stores the IP address and MAC addresses of backup network device 120 in register 104. *See* col. 2, lines 52-54 and 58-60. This is illustrated in Figure 1, which is reproduced below:



As a result, client 100 is able to change the addresses in the relevant packet headers so that packets are sent to the backup network device when the primary network device fails. *See* col. 2, lines 60-63 and col. 2, line 65 – col. 3, line 2.

Figure 2 is described in the "Detailed Description" section of Coile as illustrating "a fail over system designed according to the present invention." *See* col. 5, lines 14-15. The Figure 2 system includes a client 200, a primary server 210, and a backup server 220. *See* col. 5, lines 15-42. Client 200 stores the target IP address for the connection which the client wishes to make, but client 200 does ***not*** store the active and standby IP and MAC addresses for the primary and backup servers. *See* col. 5, lines 15-19. Instead, when primary server 210 is in the active state (i.e., has not failed), it will respond to any packets sent to the active IP or MAC address. *See* col. 5, lines 55-58. If the primary server fails, the backup server becomes active and assumes the active IP address and active MAC address. *See* col. 7, lines 5-15. Figure 2 is reproduced below:



Thus, in the Figure 1 system, client 100 determines whether to route packets to the primary device or to the backup device (by sensing whether the primary device is active or failed) and includes the appropriate addresses for the primary or backup device in the packet headers. In contrast, client 200 in the Figure 2 system does not determine

whether to route packets to the primary server or to the backup server. This is because the backup server, rather than client 200, determines when the primary server fails. Moreover, the backup server automatically assumes the active IP and MAC addresses when the primary server fails, so that client 200 does not need to determine which server should receive the packets. Indeed, client 200 does not even store the addresses of the primary and backup servers. Thus, the systems in Figures 1 and 2 are completely contrary implementations.

Unfortunately, in rejecting claims 26 and 24, the Examiner has mixed together different features from these two, contrary systems. For the "player station" recited in claims 26 and 34, the Examiner cited client 200 in Figure 2. *See* Final Office Action, p. 2. But for the "controller" in the player station, the Examiner cited col. 2, line 50 – col. 3, line 2, a section that describes client 100 in Figure 1. *See* Final Office Action, p. 3. According to the Examiner, "the controller routes the request to the primary server when the status of the primary server is active (i.e. with the use of the primary MAC and IP address) and routes the request to the secondary or backup server when the status of the primary server is failed (i.e., with the use of the backup MAC and IP address). *Id.* Thus, the Examiner's rationale requires the "player station" (client 200, which ***does not*** store the active and standby IP and MAC addresses for the primary and backup server) to include a "controller" that ***does*** require the primary and backup MAC and IP addresses in order to route requests to either the primary or backup server.

The Examiner's rationale must be rejected as being self-contradictory. The player station cannot both ***not store*** primary and backup addresses (as in client 200) and ***store*** primary and backup addresses (as in client 100). At the very least, the Examiner has

provided no reason why a person of ordinary skill in the art would have modified client 200 in Coile to incorporate the routing function of client 100. To the contrary, since the servers in the Figure 2 system automatically receive the appropriate addresses, there would be no reason to modify client 200 so that it addresses packets to reach either the primary or backup server. Moreover, Coile's statement that "[c]lient 200 does not store the active and standby IP and MAC addresses for a primary and backup server" (col. 5, lines 17-19) teaches away from any such modification of client 200. For this reason alone, the Examiner's rejection of claims 26-32 and 34-39 is clearly erroneous and should be reversed.

But the Examiner's improper and "mix-and-match" approach does not end there. The Examiner's rationale for finding a "watchdog facility" in Coile also mixes together features from the Figure 1 system and the Figure 2 system. In particular, the Examiner argued that Coile discloses "a watchdog facility or an application configures the primary server to receive data packet at regular intervals," citing to col. 5, lines 19-25. *See* Final Office Action, p. 2. That section refers to the Figure 2 system. The Examiner also argued that the data packets were "transmitted by a client," citing to col. 2, line 65 – col. 3, lines 2. That section refers to the Figure 1 system. Thus, it is not clear whether the Examiner regards the claimed "watchdog facility" to be part of the Figure 1 system, part of the Figure 2 system, or part of some hypothetical combination of the Figure 1 and Figure 2 systems. Applicant hopes that the Examiner will clarify this point, in case the Examiner continues to pursue these claim rejections.

By relying on some features of the Figure 1 system in Coile and on some features of the contrary Figure 2 system in Coile, the Examiner's rationale for rejecting claims 26-

32 and 34-39 lacks internal consistency and is fatally flawed. Accordingly, Applicant submits that the Examiner's rejection of claims 26-32 and 34-39 is clearly erroneous and should be reversed.

2. Coile does not disclose the claimed "watchdog facility"

Claim 26 recites "a watchdog facility configured to (i) transmit a ***data packet*** to the primary gaming server at regular intervals and (ii) whenever an ***expected response*** is not received from the primary gaming server within a predetermined time interval, to change a status of the primary gaming server from active to failed." Similarly, claim 34 recites "a watchdog facility transmitting a ***data packet*** to the primary gaming server at regular intervals" and "the watchdog facility changing a status of the primary gaming server from active to failed whenever an ***expected response to the data packet*** is not received from the primary gaming server within a predetermined period of time."

In rejecting claims 26 and 34, the Examiner argued that Coile discloses the claimed "watchdog facility." *See* Final Office Action, pp. 2-3. In the Examiner's rationale, the "data packet" transmitted at regular intervals is transmitted by a client, specifically client 100 described in col. 2, line 65 – col. 3, line 2. For the function of determining when an "expected response" to the data packet is not received from the primary gaming server within a predetermined time interval, the Examiner cited to Figure 5 and a section of Coile describing Figure 5 (col. 9, lines 61-65). In this regard, Coile discloses a process that determines whether an "expected message" is received:

> FIG. 5 is a process flow diagram illustrating the process for failing one of the network devices when an expected confirmation message is not received on the network. ... When an expected message is not received within an expected time frame, then control is transferred to a step 520 and the network device continues to listen for the next confirmation message. If that message is received, then control is transferred to step 510 and the

> remote network device is not failed. If the message is not received within the expected time, then control is transferred to a step 530 and the local network device which did not receive the expected message enters test mode.

See col. 9, line 62 – col. 10, line 3.

The flaw in the Examiner's rationale is that the "expected message" in Coile is not an "expected response" to a data packet, much less a data packet transmitted by client 100. As set forth in the passage quoted above, the "expected message" is an "expected ***confirmation*** message." The "confirmation messages" are messages that the primary and secondary servers send to each other periodically to confirm that they have not failed:

> Primary server 210 and backup server 220 periodically confirm to each other that they have not failed. In one embodiment, the primary network device and the secondary network device communicate every 15 seconds on the network, each sending a message to the other indicating that it has not failed. If one of the devices fails to receive a confirmation message within the prescribed interval, then the network device transfers to a test mode where it tests whether or not its network card is functioning.

See col. 6, lines 14-22. In addition to sending confirmation messages across the network, the primary and secondary network devices also send confirmation messages to each other periodically via a failover cable. *See* col. 6, lines 37-40. Thus, in Coile's approach, the servers send each other confirmation messages periodically (e.g., every 15 seconds), not in response to data packets. The "expected messages" or "confirmation messages" in Coile are not expected responses to data packets, and they are certainly not responses to data packets sent by client 100.

Accordingly, Coile teaches a fundamentally different approach than the "watchdog facility" recited in claims 26 and 34. Coile's process for determining active or failed status relies on ***one-way*** communication (receiving an expected message within an expected period of time). In contrast, the claimed "watchdog facility" uses ***two-way***

communication (transmitting a data packet and waiting for a response within a predetermined period of time) for determining whether to change the status of the primary gaming server from active to failed.

Based on the foregoing, Applicant submits that Coile neither discloses nor suggests either "a watchdog facility configured to ... (ii) whenever an ***expected response*** is not received from the primary gaming server within a predetermined time interval, to change a status of the primary gaming server from active to failed," as recited in claim 26, or "the watchdog facility changing a status of the primary gaming server from active to failed whenever an ***expected response to the data packet*** is not received from the primary gaming server within a predetermined period of time," as recited in claim 34. Applicant further submits that Holch does not make up for this deficiency in Coile.

Because Coile in view of Holch does not teach a "watchdog facility" as recited in claims 26 and 34, Applicant submits that the Examiner's rejection of 26-32 and 34-39 is clearly erroneous and should be reversed.

B. The Examiner Erred in Rejecting Claims 33 and 40 Under 35 U.S.C. § 103(a) as Being Unpatentable Over Coile in View of Holch, and Further in View of Duncombe

Claim 33 is dependent on claim 26, and claim 40 is dependent on claim 34. Applicant submits that the rejections of claims 33 and 40 are erroneous for at least the same reasons as set forth above for claims 26-32 and 34-39. Moreover, if an independent claim is nonobvious, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

C. Conclusion

Applicant has demonstrated that the rejections of claims 26-40 are erroneous as a matter of law. Applicant therefore requests reversal of the rejections and allowance of all pending claims in this application.

Respectfully submitted,

Date: April 22, 2009 By: Richard A. Machonkin

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VIII. Claims Appendix

Claims 1-25: Canceled

26. (previously presented) A gaming system comprising:

at least one player station for displaying to a player a simulation of a game of chance;

a primary gaming server located remotely from the at least one player station and communicable with the at least one player station via a communication network, wherein the primary gaming server is configured to provide outcomes for the game of chance upon request from the at least one player station;

a secondary gaming server located remotely from the at least one player station and communicable with the at least one player station via the communication network, wherein the secondary gaming server is configured to provide outcomes for the game of chance upon request from the at least one player station;

a watchdog facility configured (i) to transmit a data packet to the primary gaming server at regular intervals and (ii) whenever an expected response is not received from the primary gaming server within a predetermined time interval, to change a status of the primary gaming server from active to failed; and

a controller in the at least one player station for routing a request to provide an outcome of a turn of the game of chance, wherein the controller routes the request to the primary gaming server when the status of the primary gaming server is active and routes

the request to the secondary gaming server when the status of the primary gaming server is failed.

27. (previously presented) A gaming system as claimed in claim 26, wherein the primary gaming server uses a primary random number generator to determine outcomes for the game of chance and the secondary gaming server uses a secondary random number generator to determine outcomes for the game of chance.

28. (previously presented) A gaming system as claimed in claim 27, wherein the primary and secondary random number generators are software random number generators.

29. (previously presented) A gaming system as claimed in claim 26, wherein the at least one player station is a computer workstation and the communication network is the Internet.

30. (previously presented) A gaming system as claimed in claim 26, wherein the watchdog facility is a program executed on the at least one player station.

31. (previously presented) A gaming system as claimed in claim 30, wherein the watchdog facility generates an alarm when the status of the primary gaming server changes from active to failed.

32. (previously presented) A gaming system as claimed in claim 31, wherein the alarm is audible and/or visible.

33. (previously presented) A gaming system as claimed in claim 26, wherein the primary and secondary gaming servers synchronize their data at regular intervals.

34. (previously presented) A method of operating a gaming system, the gaming system comprising a player station, a primary gaming server, and a secondary gaming server, the player station being remotely located from and communicable with the primary and secondary gaming servers via a communication network, the method comprising the steps of:

displaying on the player station a simulation of a game of chance;

a watchdog facility transmitting a data packet to the primary gaming server at regular intervals;

the watchdog facility changing a status of the primary gaming server from active to failed whenever an expected response to the data packet is not received from the primary gaming server within a predetermined time interval;

a controller in the player station routing a request to provide an outcome of a turn of the game of chance, wherein the controller routes request to the primary gaming server when the status of the primary gaming server is active and routes the request to the secondary gaming server when the status of the primary gaming server is failed;

determining an outcome in response to the request; and

the player station receiving the outcome via the communication network and displaying the outcome to a player.

35. (previously presented) A method as claimed in claim 34, wherein determining an outcome in response to the request comprises:

the primary gaming server executing a primary random number generator.

36. (previously presented) A method as claimed in claim 34, wherein determining an outcome in response to the request comprises:

the secondary gaming server executing a secondary random number generator.

37. (previously presented) A method as claimed in claim 34, further comprising:

executing the watchdog facility on the player station.

38. (previously presented) A method as claimed in claim 37, further comprising:

the watchdog facility generating an alarm when the status of the primary gaming server changes from active to failed.

39. (previously presented) A method as claimed in claim 38, wherein the alarm is audible and/or visible.

40. (previously presented) A method as claimed in claim 34, further comprising:

the primary and secondary gaming servers synchronizing their data at regular intervals.

IX. Evidence Appendix

None.

X. Related Proceedings Appendix

None.